

RESOLUTION AUTHORIZING UPSET BID PROCESS TO LEASE THE DURHAM BULLS ATHLETIC PARK TO THE DURHAM BULLS BASEBALL CLUB, INC.

WHEREAS, the City has received an offer (the "Initial Bid") from THE DURHAM BULLS BASEBALL CLUB, INC. (the "Initial Offeror") to lease the Durham Bulls Athletic Park, at 409 Blackwell Street, for an initial term of 20 years, with options to renew for 2 additional 5-year terms for a total potential term of 30 years. The Initial Offeror has paid the required 5% deposit of its offer for the initial term of 20 years.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DURHAM RESOLVES THAT:

1. The City Council authorizes the lease of the Durham Bulls Athletic Park through the upset bid procedure of N. C. G. S. § 160A-269. The City Council determines that the property proposed to be leased will not be needed by the City for the term of the proposed lease.

2. The City Clerk shall maintain a copy of the proposed lease for public inspection. The lease as proposed by the Initial Offeror includes a provision that the tenant will pay rent of \$125,000.00 per year as Base Rent, subject to increase or decrease each year by the CPI (Consumer Price Index) plus Additional Rent as described in the proposed lease. The lease further incorporates and is made conditioned upon the performance of certain facility repair and improvement obligations of both the City and prospective tenant described in a certain proposed Agreement for the Redevelopment and Renovation of Durham Bulls Athletic Park (the "Development Agreement"), which, among other things, requires the successful bidder to contribute a minimum of \$2 Million to certain improvements that will be made to Durham Bulls Athletic Park as well as pay for any cost overruns of the improvements and the renovations that are to be performed by the City to cure deferred maintenance issues, as more particularly provided in the proposed Development Agreement. A copy of the proposed Development Agreement is also maintained by the city Clerk for public inspection.

3. The lease shall be as proposed by the Initial Offeror except as otherwise allowed by this resolution.

4. The Department of General Services shall cause a notice of the Initial Bid to be published.

5. Persons wishing to upset the Initial Bid shall submit a sealed bid with their offer, with the information required by paragraph 3 above, to the Department of General Services, within 10 days after the notice of the Initial Bid is published. At the end of the 10-day period, bids received will be opened, and the highest bid will become the new offer. If there is more than one bid in the same highest amount, the first such bid received will become the new offer. If more than one bid in the amount of the highest offer is received at the same time, lots shall be drawn to determine the new offer.

6. A qualifying bidder must either (a) own a franchise and be a member of the National Association of Professional Baseball Leagues, a member of a league that plays a full season of at least 100 games at a level of Triple-A baseball, and hold a player development contract with a member club of Major League Baseball or (b) demonstrate

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that it owns and operates a professional baseball club capable of the level of play and quality equal to or greater than a bidder qualified under 5(a), which level of play shall include opposing teams, and a league or other affiliation of teams of which the bidder is a member.

7. If a qualifying higher bid is received, the Department of General Services shall cause a new notice of upset bid to be published, and shall continue to do so until a 10-day period has passed during which the Department of General Services does not receive a qualifying upset bid. At that time, the amount of the final high bid shall be reported to the City Council.

8. A qualifying higher bid is one that raises the existing offer by at least 10% of the first \$1,000 of that offer and 5% of the remainder of that offer. The lease provides that the rent be based upon both a Basic Rent of \$125,000.00 per year subject to increase or decrease each year according to the CPI, but for purposes of the upset bid procedure, offers shall assume a 2% CPI increase in the Base Rent and a similar increase in Additional Rent revenues based upon projected gross revenues over the 20 year Initial Term.

9. The initial rent is \$125,000.00 per year, subject to an estimated annual CPI rate increase of 2% over 20 years (the Initial Term), or \$3,037,171. The Additional Rent under the lease agreement assumes 3% share of gross revenues over a certain gross revenue point generated from the operations of the Durham Bulls Athletic Park, with an annual inflationary increase of 2%, resulting in estimated Additional Revenues of \$2,294,751 over the 20 year Initial Term. The grand total of both Base Rent and Additional Rent equals \$5,331,922 (the Initial Bid), which is multiplied by 0.05 (5%) to determine the Initial Bid deposit of **\$266,596**.

10. A qualifying higher bid must be accompanied by a deposit in the amount of 5% of the bid. The deposit shall be made by bank check, cashier's check, or certified check. The check must be on a bank or trust company insured by the FDIC. The City will return the deposits, including the deposit made with the Initial Bid: (i) at closing; (ii) if the City withdraws the property from the proposed lease before the final high bid is accepted; or (iii) if the City rejects all bids. The deposit by the successful bidder is subject to forfeiture if the successful bidder fails to comply with paragraph 12.

11. The City Council must approve the final high offer before the lease is executed. The Initial Bid is hereby approved.

12. The lease must be executed by the successful bidder and returned, with the first month's rent, to the Department of General Services within 30 days after the final upset bid period has passed. The Director of the Department of General Services may extend the 30-day period by a total of 90 days for good cause.

13. The City reserves the right to withdraw the property from the proposed lease at any time before the final high bid is accepted. The City reserves the right to reject all bids at any time.

14. If no qualifying upset bid is received after the initial public notice, the Initial Bid is hereby accepted. The City Manager is hereby authorized to execute the proposed lease with the Initial Offeror.